

CLYDE SHIRONE BANKS

55 JSW

- Original

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983

Name Banks Shirone
 (Last) (First) (Initial)

Prisoner Number T13203 (SVSP)

Institutional Address P.O. Box 1050, Seledad CA 93960

FILED
 JUL - 3 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Shirone Banks
 (Enter the full name of plaintiff in this action.)

vs.

M.S. Evans, Warden;

G. Ponder, Captain.

(Enter the full name of the defendant(s) in this action)

CV 08

3224

Case No. _____
 (To be provided by the Clerk of Court)

COMPLAINT UNDER THE
 CIVIL RIGHTS ACT,
 Title 42 U.S.C § 1983

* Jury Trial Demanded

[All questions on this complaint form must be answered in order for your action to proceed..]

I. Exhaustion of Administrative Remedies.

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement Salinas Valley State Prison

B. Is there a grievance procedure in this institution?

YES ☒ NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES ☒ NO ()

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal Bypass

2. First formal level Submitted, Denied SVSP 06-02421

3. Second formal level Submitted, Denied SVSP 06-02421

4. Third formal level Submitted, Rejected SVSP 06-02421

E. Is the last level to which you appealed the highest level of appeal available to you?

YES ☒ NO ()

F. If you did not present your claim for review through the grievance procedure, explain why.

II. Parties.

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

Shirone Banks #T13203

P.O. Box 1050

Soledad, CA 93960

B. Write the full name of each defendant, his or her official position, and his or her place of employment.

M.S. Evans, Warden; G. Pender, C-Facility Captain. These defendants place of

employment is Salinas Valley State Prison 31625 Highway 101, P.O. B. 1050, Soledad CA- 93960. These defendants are sued in Their official And Individual capacity.

III. Statement of Claim.

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

CAUSE OF ACTION

Plaintiff support The following claim by Reference To Plaintiff's Declaration attach To This complaint hereto:

Claim - 1

On or About November 2005 through December 2006 at SVSP Defendant M.S. Evans and G. Ponder who acted willfully And with deliberate indifference by depriving me of my basic human need To outdoor exercise for a substantially long period of Time. Thus causing me mental And physical injuries. Violating The Eighth Amendment prescription against Cruel And unusual punishment.

IV. Relief.

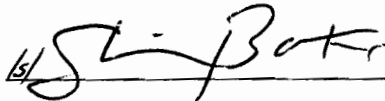
Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

1. Compensatory damages in The Amount of \$ 10,000 each defendant Jointly And Severally;
2. Nominal damages;
3. Punitive damages in The Amount of \$ 15,000 each defendant Jointly And Severally;

1 4. Declaratory Relief delaying The Rights of The parties; Injunctive Relief.
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5 I declare under penalty of perjury that the foregoing is true and correct.
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7 Signed this 18th. day of June, 2008
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(Plaintiff's signature)
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Shirone Banks # T13203
P.O. Box 1050
Soledad, CA 93960
In Pro-Se

United States District Court
Northern District of California
San Francisco Division

Shirone Banks,
Plaintiff,

v.

M.S. Evans, et al.
Defendants.

Case No.

Declaration of S. Banks In
Support of Complaint

I, Shirone Banks, declare:

1. Being competent to make this declaration and having personal knowledge of the matters stated therein, declares pursuant to 28 U.S.C. § 1746:

2. I am currently confined within the California Department of Correction and Rehabilitation (CDCR) at Salinas Valley State Prison (SVSP), and have been during the following events.

3. On or about November 5, 2005 I was placed on C-Facility (C-Yard) which was on a modified program due to a staff assault that took place in July 15, 2005 by a white ethnic prisoner which had nothing to do with me. I wasn't even on C-Yard at the time.

///

1 4. I was asked to interview on several occasions about the
2 staff assault that took place before my arrival to C-Yard. I
3 told staff (prison guards) at these interviews that I did not
4 have any information to provide, and that I did not know
5 anything and that I just arrived on C-Yard. I also told all
6 staff that I was willing to program without violence. I
7 was then told to sign some documents, and because I
8 declined to sign such documents all of my rights and privileges
9 were denied, specifically, my right to some form of outdoor exercise.
10 (See Exh. A Memorandum Authored by G. Ponder dated: November 4, 2005).

11 5. This resulted in me losing all access to outdoor exercise
12 and to remain in handcuffs everywhere I go. I was denied outdoor
13 exercise for about 395 consecutive days which resulted in
14 physical and mental injuries. I suffered headaches, neck and back pain,
15 constipation, mental anguish, emotional distress and insomnia.

16 6. I informed defendants M.S. Evans who is the warden
17 of SVSP and responsible for the welfare of all prisoners, defendant
18 G. Ponder who is the captain on C-Yard and responsible for all of the
19 operations and programs on C-Yard, through the appeal process, that
20 I was being denied all means to outdoor exercise for no legitimate
21 reason and no alternative was ever provided. These defendants
22 failed to respond to my basic human need, which they knew
23 they had a constitutional duty to provide, keeping me confined
24 in the cell for over 395 days. I had a right to some
25 form of outdoor exercise during this time.

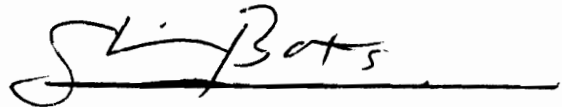
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2 7. Between November 2005 And December 2006 all other
3 prisoners were allowed outdoor exercise on C-Yard which
4 is when I was deprived of my basic human need.

5 8. Defendant M.S. Evans And G. Ponder were/has acted
6 under color of State Law.

7
8 I declare under penalty of perjury That The foregoing is
9 True And correct. Executed This 18th. Day of June 2008.

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12 Shirone Banks #713203

13 In Pro-Se
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Exhibit

A

MEMORANDUM

Date: November 4, 2005

To: Inmate Banks (T13203)

Subject: **NON-CONTACT VISITING/FACILITY C INTERVIEW PROCESS**

On July 14, 2005 an inmate attacked and stabbed two correctional officers during the morning meal within C8. Due to this assault the facilities as well as the institution were placed on modified program pending administrative review.

As part of the review process, all C Facility inmates will be interviewed concerning the assault that occurred on July 14th, any possible threats on staff or inmates and the ability to safely program. You, Inmate Banks have been identified as either failing to successfully complete the interview process or interviewing in such a fashion that staff cannot determine the threat you pose to staff or inmates. Based on these two factors, staff has either determined you as a potential threat to staff or inmates or is unable to determine your threat to staff or other inmates. Based on this you will remain on modified program and be placed on the bottom of the list to be reviewed for program potential. Staff will continue the review process of those inmates that participate in an attempt to return them to normal program.

Based on this you will remain on modified program to include **personal hygiene canteen draw only, no quarterly packages, no special purchase.** Also due to your refusal/failure to comply with the interview process and administrations inability to ascertain your threat status you will be placed on **non-contact visiting.** These modifications will remain in effect until further notice.

Remember, the Department values the sanctity of humane life and will not allow anyone to place another human life in jeopardy. Your help is needed and expected to achieve this goal.


G. Ponder
Facility C
Salinas Valley State Prison

PROOF OF SERVICE BY MAIL
VERIFICATION

I, Terrell D. Curry, declare:

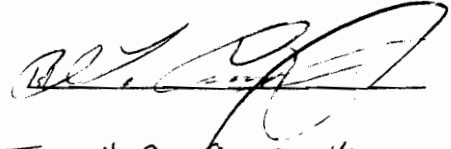
I am over the age of 18, not a party to this action, and I reside in Soledad, CA., at Salinas Valley State Prison (SVSP) in Monterey County at P.O. BOX 1050 Soledad, CA. 93960-1050. On June 19, 2008, I deposited in the United States mail in the SVSP institutional mail system at P.O. BOX 1050 Soledad, CA., a copy of: 42 U.S.C. 1983 Civil Complaint; Application To Proceed In Forma Pauperis.

_____, in a sealed envelope, with postage fully prepaid, addressed to:

Office of The clerk
U. S. District Court
Northern Dist. of California
450 Golden Gate Ave.
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the state of California that the foregoing is true & correct.

Dated: June 19, 2008.


Terrell D. Curry #729338